Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

October Term, 1998

THE SECRETARY OF THE WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES, ET AL.,

Petitioners,

v.

PATRICK ADDIS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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53 pp

QUESTION PRESENTED

Whether the prohibition in 42 U.S.C. § 1396a(a)(17) against attributing to a Medicaid applicant the "income and resources" of non-financially responsible persons, *i.e.*, someone other than the applicant's spouse or parents, prohibits a State from considering the economies of scale of immediate family members living together when determining eligibility for Medicaid.

LIST OF PARTIES

Actual parties to the proceedings in the Court of Appeals were:

Gerald Whitburn, individually and in his official capacity as Secretary of the Wisconsin Department of Health and Social Services, J. Jean Rogers, individually and in her official capacity as the Administrator of the Division of Economic Support, Wisconsin Department of Health and Social Services, and their Agents, Employees, Successors in Office, Assistants and All Others Acting in Concert or Cooperation with Them or at Their Direction or Under Their Control. On January 3, 1995, Gerald Whitburn resigned as the Secretary of the Wisconsin Department of Health and Social Services and on July 6, 1995, Joseph E. Leean became the Secretary of the Wisconsin Department of Health and Social Services, on July 1, 1996, the Wisconsin Department of Health and Social Services became the Wisconsin Department of Health and Family Services, and on that same date, J. Jean Rogers and the Division of Economic Support were transferred to the Wisconsin Department of Workforce Development.

Petitioners herein,

Patrick Addis, Ryan Addis and Sara Addis by their next friends Patrick and Michelle Addis, Dominic Benvenuto, by his next friend Marcia Benvenuto, Craig Johnson by his next friend Donna Worrall, Robert Taloff, Trisha and Joseph Taloff by their next friends Robert and Janice Taloff, and Gisselle Castro by her next friend Carmen Carter, individually and on behalf of all others similarly situated,

Respondents herein.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, the Secretary of the Wisconsin Department of Health and Family Services, and all of his employees, etc., respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on September 4, 1998.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 153 F.3d 836 (A-3-18). The opinion of the United States District Court for the Eastern District of Wisconsin (A-19-37) is unreported.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on September 4, 1998. Petitioners filed a Petition for Rehearing With Suggestion of Rehearing En Banc which was denied by Order dated October 5, 1998 (A-1-2). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTUES AND REGULATIONS INVOLVED

Title 42 U.S.C. § 1396a(a)(17) provides in relevant part, that medical assistance programs must:

> include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels... based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such *income and resources* as are ... *available* to the applicant or recipient and... (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the *financial responsibility* of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to

> the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law.

The Code of Federal Regulations provides for "Limitation on the financial responsibility of relatives":

> (a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not--
>
> (1) Consider income and resources of any relative available to an individual; nor
>
> (2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.
>
> (b) The income and resources of spouses and parents must be considered in determining financial eligibility as provided for the categorically needy in Subpart H and the medically needy in Subpart I of this part.

42 C.F.R. § 435.602 (1992).

STATEMENT OF THE CASE

On December 6, 1993, respondents commenced an action under 42 U.S.C. § 1983 for declaratory and injunctive relief, on behalf of all applicants for and recipients of medical assistance in Wisconsin who have been harmed by a denial or decrease in medical assistance benefits based on Wisconsin's "Family Fiscal Unit Policy." The jurisdiction of the district court was invoked

under 28 U.S.C. §§ 1331 and 1343(3) and (4). Petitioners moved to dismiss the complaint in the district court. The motion was granted, and respondents appealed to the Seventh Circuit Court of Appeals. The Seventh Circuit had three issues before it, petitioners have sought certiorari on only one of those issues.

There is no dispute of fact. The only issue is a question of law.

In 1993, the State of Wisconsin adopted a Family Fiscal Unit policy for determining eligibility for medical assistance. 153 F.3d at 839 (A-7). Under that policy Wisconsin determines the eligibility of each applicant for medical assistance by calculating the applicant's own income and assets and adding to that the prorated share of the income and assets of anyone who is "financially responsible" for the applicant. Only the applicant's spouse or parent(s) is "financially responsible," and therefore in the applicant's "family fiscal unit." *Id.* (A-7-8). "That prorated share is calculated by dividing the legally responsible relative's income and assets by the total number of persons for whom the relative is legally responsible, including himself or herself. Spousal and parental income is thus allocated equally amongst the spouse or parent and those for whom she is financially responsible." *Id.* at n.1 (A-8 n.1). Under this calculation there is no improper attributing of income between non-financially responsible individuals, such as siblings. There is no dispute by respondents that this calculation of an applicant's income is proper. *Id.* at 841 (A-11).

The next step Wisconsin takes is to compare the individual applicant's income (including allocated income) to the need standard for a family of the size of family in which the applicant lives, prorated amongst the number of family members in the applicant's family. This calculation of need would include in a family only a parent or parents and their children.

Respondents claim this proration of need, even amongst immediate family members, violates 42 U.S.C. § 1396a(a)(17)(D) because it is the equivalent of holding one sibling "financially responsible" for another. The district court rejected respondents' view, concluding that based on the definition of financial

responsibility in 42 C.F.R. § 435.602(a)(1) (1992), title 42 U.S.C. § 1396a(a)(17)(D) refers only to the "income and resources" available to an individual, not to the use of a federal family needs chart that has economies of scale built into it (A-29). The district court found Wisconsin's needs standard is not wrongfully attributing the financial responsibility of non-financially responsible persons, but is reflecting the common–sense judgment that living expenses are lower when an individual is sharing accommodations (A-32). The Seventh Circuit reversed the district court, holding that the need standard Wisconsin uses to determine benefits is effectively taking into account the financial responsibility of non-financially responsible persons, in violation of 42 U.S.C. § 1396a(a)(17)(D). 153 F.3d at 841-42 (A-12-13). The Seventh Circuit reasoned that "when a state assumes that an applicant's living expenses are less based solely upon the presence of non-legally responsible persons in the household, thereby reducing the applicant's level of need, the state necessarily is assuming that those persons will be contributing to the applicant's living expenses." *Id.* at 842 (A-13) (citation omitted).

REASONS FOR GRANTING THE WRIT

This case is important to all States and individuals participating in the medical assistance program known as "Medicaid" because the court of appeals' decision prohibits States from considering the size of the family a person lives in when determining that person's need for medical assistance under 42 U.S.C. § 1396a(a)(17)(D). This case involves a significant question of federal law that affects the calculation of millions of dollars of federal and state aid under the Medicaid program. The court of appeals' decision overlooks that Congress has established the family as the relevant building block in assessing an individual's eligibility for medical assistance, instead finding that considering the economies of scale of a family living together is the equivalent of unlawful attribution of income. The court of appeals ignored that the federal Health Care Financing Administration had proposed calculations using the family unit methodology Wisconsin adopted.

I. THIS CASE PRESENTS AN IMPORTANT FEDERAL QUESTION.

This case sets up a conflict between the traditional view of considering a family when determining eligibility for medical assistance and the court of appeals' reading of 42 U.S.C. § 1396a(a)(17)(D) to prohibit the consideration of the economies of scale inherent in a person's living with immediate family members.

To comply with the requirements of the Social Security Act, Wisconsin established a "Family Fiscal Unit" policy whereby the income and assets of an adult are divided and attributed ("deemed") to that adult and his/her spouse and children. The propriety of this calculation is not disputed. Each individual's income is then compared to the need level of one member of a family consisting of a parent or parents and their children (*e.g.*, if two parents and three children, each child's income is compared to the need level of one-fifth of a family of five). The Seventh Circuit's determination that including siblings in this determination of the level of need violates the prohibition against deeming of income except between financially responsible persons, *i.e.*, spouse or children, found in 42 U.S.C. § 1396a(a)(17)(D), means a State may never recognize that a person lives in a family larger than one child with two parents and that a State cannot consider the economies of scale of living in a family with more than one child. The court of appeals' holding requires that in determining a child's need for medical assistance the State must apply the fiction that he is an only child even if he is the sixth child of his mother living in that home. This is a very costly change in the administration of Medicaid for Wisconsin and for numerous other states.[1]

In reaching its conclusion, the Seventh Circuit relied on a similar conclusion by a federal district court in California, ultimately adopted by the Ninth Circuit in an unpublished opinion,

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[1]On remand petitioners expect to show that the court of appeals' decision in this case will cost the State of Wisconsin and the federal matching program 17 million dollars annually because of the number of people whose Medicaid eligibility will change.

Sneede v. Kizer, No. C89-1932, 1990 WL 155532 (N.D. Cal. June 8, 1990), *aff'd mem.*, 951 F.2d 360 (9th Cir. 1991), *cert. denied*, 506 U.S. 939 (1992), and noted a West Virginia district court's similar reasoning in *Richardson v. Lewis*, No. 5:92-0731, slip op. (S.D. W. Va. Sept. 23, 1994). The Seventh Circuit also wrote that its conclusion found support in *Van Lare v. Hurley*, 421 U.S. 338 (1975), in which this Court found that a New York statute, creating the "assumption that the nonpaying lodger is contributing to the welfare household, without inquiry into whether he in fact does so" was "invalid," *id.* at 346, although that case did not involve subsection 17(D).

The court of appeals' conclusion that an individual's income can be compared to one-half of a family of two (married couple or parent and child) and one-third of a family of three (two parents and one child), is logically inconsistent with their determination that an individual's income cannot be considered based on a larger family. There is no dispute that allocating the income of a mother to all four of her children, so each family member has an income of one-fifth of the mother's is acceptable. And yet when each child's income is compared to the level of need, the Seventh Circuit held that each child's need is compared to one-half of a family of two, only including the mother in the family group, but not siblings because they are not legally responsible for each other. The logical inconsistency in this is two-fold: First, this interpretation of the Medicaid rules requires the "income and resources" of the mother to be allocated amongst all her children in the income determination step, but when this "income and resources" term is held to include determination of level of need, all her children *cannot* be considered, so the mother's need is not being allocated in the same manner in both prongs of the calculation. Second, if the Seventh Circuit's reasoning were carried to its logical conclusion, each child would be compared to the need level of a family of one, a parent should not be included because a child is not "financially responsible" for his mother, *i.e.*, the child's income cannot be partially attributed to his mother.

In previous cases this Court determined that Congress may consider that parents will use all funds in a manner to benefit the entire family unit, and reduction of per capita costs based on

family size can be considered. *Bowen v. Gilliard*, 483 U.S. 587, 599-600 (1987). Similarly, in *Anderson v. Edwards*, 514 U.S. 143 (1995), this Court discussed taking into account "reality" and held that California "may rationally assume that a caretaker will observe her duties to all the members of the AU [assistance unit] and will take into account the receipt of any outside income by one child when expending funds on behalf of the AU." *Id.* at 153.

The court of appeals' ruling is also in conflict with the regulations proposed by the Health Care Financing Administration and the United Stated Department of Health and Human Services, although those policy recommendations were eventually withdrawn. (A-26-27, citing Affidavit of respondents' counsel, Patricia DeLessio). The proposed proration policy was withdrawn by the Health Care Financing Administration, citing overwhelming negative commentary regarding the mechanics of instituting this program. The district court herein noted:

> Moreover, the proposed HCFA regulations would have made the system enacted by Wisconsin *mandatory* for all states. It is significant that these regulations were withdrawn, not because they failed to comply with the SSA, but in order to provide the states with more flexibility in administering their Medical Assistance programs. Although the Court is cognizant of the fact that these proposed regulations are not the law, their proposal and history certainly suggests that the Wisconsin plan complies with federal law; at least the federal agency in charge of implementing the Medicaid program thought so.

(A-27).

A decision by this Court would give guidance to all States concerning how to administer Medicaid. No further proceedings in the lower courts are needed to clarify the issue presented. There is no extensive factual record and no dispute of any fact. This important question of federal law is ready for resolution by this Court.

CONCLUSION

For the above reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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December 1998

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In The

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October Term, 1998

THE SECRETARY OF THE WISCONSIN DEPARTMENT OF HEALTH AND FAMILY SERVICES, ET AL.,

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

APPENDIX

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United States Court of Appeals

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

October 5, 1998.

Before

Honorable RICHARD A. POSNER, Chief Judge

Honorable WALTER J. CUMMINGS, Circuit Judge

Honorable ILANA DIAMOND ROVNER, Circuit Judge

No. 96-3748

PATRICK ADDIS, et al.	] Appeal from the United States
	] District Court for the Eastern
Plaintiffs-Appellants,	] District of Wisconsin
	]
v.	]
	] No. 93 C 1363
GERALD WHITBURN,	]
individually and in his official	]
capacity as Secretary of the	]
Wisconsin Department of	]
Health and Social	]
Services, et al.,	]
	] Rudolph T. Randa,
Defendants-Appellees.	] Judge.

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en bane filed by defendants-appellees on September 24, 1998, no judge in active service has requested a

vote thereon, and all of the judges on the original panel have voted to deny the petition. Accordingly,

IT IS HEREBY ORDERED that the petition for rehearing with suggestion for rehearing en bane be, and the same is, hereby DENIED.

IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 96-3748

PATRICK ADDIS, *et al.*,

Plaintiffs-Appellants,

v.

GERALD WHITBURN, individually and in his official capacity as Secretary of the Wisconsin Department of Health and Social Services, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Wisconsin,
No. 93 C 1363-**Rudolph T. Randa**, *Judge.*

ARGUED SEPTEMBER 15, 1997-DECIDED SEPTEMBER 4, 1998

Before POSNER, *Chief Judge*, and CUMMINGS and ROVNER, *Circuit Judges*.

ROVNER, *Circuit Judge*. At issue in this complex case is the validity of various aspects of the State of Wisconsin's Medical Assistance plan. Plaintiffs contend that portions of the state program violate the federal Social Security Act and thus should be enjoined, and that one aspect of the program also violates the Americans with Disabilities Act and the Rehabilitation Act. Rather than granting the requested injunction, the district court dismissed plaintiffs' complaint in its entirety, finding that plaintiffs could not succeed in showing that any of the challenged portions of Wisconsin's program violates federal law. Because we believe that two aspects of the state plan are inconsistent with a provision in the Social Security Act, we reverse the district court's judgment in part and affirm in part.

I.

At this stage of the proceedings, we assume the truth of the facts alleged in plaintiffs' complaint and draw all reasonable inferences from those facts in plaintiffs' favor. *Ashafa v. City of Chicago*, 146 F.3d 459, 461 (7th Cir. 1998). Defendants--the Secretary of Wisconsin's Department of Health and Social Services and others working under his direction--do not dispute that plaintiffs' complaint, as well as their opening brief to this court, accurately describe the operation of Wisconsin's Medical Assistance plan. Their response to the complaint is that the plan does not violate federal law. We therefore base the following summary of Wisconsin's Medical Assistance plan on the allegations in plaintiffs' complaint and on the description provided in plaintiffs' opening brief.

The Medical Assistance program, more commonly known as "Medicaid," is a federal program administered by the states. The federal government provides partial reimbursement to participating states for the cost of medical services provided under the program, as well as for the cost of the program's administration. Yet in order to receive those federal funds, a state must operate its medical assistance program in compliance with the Social Security Act ("SSA") and its implementing regulations

(*see* 42 U.S.C. § 1396a(a)), not always an easy task given the maze of statutory provisions and federal regulations involved. *E.g. Schweiker v. Gray Panthers,* 453 U.S. 34, 43 (1981) ("The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act 'almost unintelligible to the uninitiated.'") We provide a brief overview below of the provisions relevant here.

Under the SSA, states are required to provide medical assistance to certain categories of individuals, whereas coverage to others is optional. *See* 42 U.S.C. § 1396a(a)(10)(A)(i). In all, we shall refer to three categories of potential recipients—the "categorically needy," the "medically needy," and those whose need is determined in relation to the poverty level. Individuals included in the following groups are considered "categorically needy" and thus are automatically entitled to medical assistance coverage: (1) those who receive Aid to Families with Dependent Children ("AFDC") benefits and Supplemental Security Income ("SSI") benefits; (2) pregnant women, children under eighteen and their caretakers, and disabled persons with income and assets at or below AFDC limits; (3) those who lose their eligibility for AFDC benefits due to increased earnings or child support income; and (4) infants under the age of one who are born to women who are eligible for medical assistance at the time of the infant's birth. *Id.*

In addition to the "categorically needy" groups, states are permitted at their option to provide coverage to those who are considered "medically needy," a group generally including pregnant women, children, and disabled and elderly persons who otherwise would qualify for AFDC and SSI benefits except that their income and asset levels exceed the levels permitted under those programs. Wisconsin has chosen to provide medical assistance to those in the "medically needy" category, and it has established standards for obtaining that assistance which are based on the size of the recipient's family. The SSA requires that a state's need standards be "equivalent to 133 1/3 percent of the highest amount which would ordinarily be paid to a family of the same size" under the state's AFDC program. 42 U.S.C.

§ 1396b(f)(1)(B)(i). Moreover, if an applicant's income exceeds the state's need standards, he still may qualify for medical assistance after satisfying a deductible calculated on the basis of his excess income. *See* 42 C.F.R. § 435.831(e).

The final group of medical assistance recipients includes pregnant women and children who do not qualify as either categorically or medically needy but whose family income is at or below a designated percentage of the poverty level. *See* 42 U.S.C. § 1396a(a)(10)(A)(IV-VII). States are required, for instance, to provide medical assistance to pregnant women and infants less than one year of age whose family income is at or below 133 percent of the poverty level; to children under the age of six whose family income is at or below 133 percent of the poverty level; and to children born after September 30, 1993 who are between the ages of six and nineteen and whose family income is at or below 100 percent of the poverty level. *Id.* At their option, states may also provide medical assistance to pregnant women and infants less than one year of age whose family income is at or below 185 percent of the poverty level. *Id.* In Wisconsin, the medical assistance program covering this "poverty level" group is referred to as the "Healthy Start" program. See Wis. Stats. §§ 49.46 & 49.47.

In addition to these specific categorical guidelines, the SSA also requires that state medical assistance plans comply with certain more general principles. First, states must develop and utilize standards for determining income and resource eligibility that are no more restrictive than those employed in determining eligibility for the SSI program for SSI-related persons and the AFDC program for AFDC-related persons. 42 U.S.C. § 1396a(a)(10)(C)(i). Second, states are directed in establishing eligibility standards to provide a reasonable evaluation of the income and resources available to the applicant or recipient and to take account only of income and resources that are actually so available. 42 U.S.C. § 1396a(a)(17)(B) & (C). At the same time, states are prohibited from taking into account "the financial responsibility of any individual for any applicant or recipient"

unless the individual is the applicant's spouse or parent. 42 U.S.C. § 1396a(a)(17)(D). Finally, in determining whether pregnant women and children are eligible for participation in a poverty level program such as Wisconsin's "Healthy Start," states are required to determine family income in accordance with the methodology employed under that state's AFDC program, except to the extent that the methodology is inconsistent with 42 U.S.C. § 1396a(a)(17)(D)'s financial responsibility rule. 42 U.S.C. § 1396a(1)(3)(E).

Having elected to participate in the Medicaid program, Wisconsin must attempt to successfully navigate these federal requirements, the most troublesome of which seems to be the financial responsibility rule of 42 U.S.C. § 1396a(a)(17)(D) ("subsection (17)(D)"). Prior to June 1, 1993, Wisconsin determined eligibility for medical assistance by treating all related persons in a single household as one group, except in limited circumstances. The income and assets of that household group were then compared to the state's need standard for a group of that size to determine eligibility for medical assistance. In a series of administrative hearing decisions, however, the Wisconsin Department of Health and Social Services determined that this practice violates subsection (17)(D) when an individual other than the applicant's spouse or parent has his or her own income that is included in the total income of the household group.

In response to those decisions, Wisconsin adopted the Family Fiscal Unit policy ("FFU") for determining eligibility for medical assistance. Under that policy, Wisconsin no longer considers the income and assets of the entire family group in assessing an applicant's eligibility, but sets up individual fiscal test groups that are designed to avoid assigning income to the applicant that was earned by a non-legally responsible person—*i.e.*, by someone other than the applicant's spouse or parent. As the district court explained it, eligibility is now determined "one individual at a time rather than family by family." R. 19, at 5. Thus, under the FFU policy, eligibility is determined first by calculating the applicant's own income and assets and adding to

them a prorated share of the income and assets of the applicant's spouse or parent.[1] Once the applicant's income is so calculated, it is compared to a pro rata share of the state's need standard for the size of the entire family under consideration. In other words, Wisconsin does not compare the income of a family fiscal unit to the need standard for a unit of that size or even to a pro rata share of the standard for a group of the unit's size; it instead compares the applicant's income as calculated under the FFU policy to the need standard for the entire family group, as prorated amongst the group's individual members.

And as we said, even if the applicant's income exceeds the limits of the state's need standards, he still may qualify for medical assistance after satisfying a deductible amount. Under Wisconsin's FFU policy, it is possible that more than one fiscal unit within a related household will have a medical assistance deductible, and in that case, Wisconsin requires that the deductible amounts be combined in order to establish a deductible for the entire family group. Thus, an individual applicant will not qualify for medical assistance until he satisfies not only his own deductible, but also the combined deductible of his entire family group.

Finally, where a child's caretaker who is herself disabled requests medical assistance both for herself and for the child or children in her care, Wisconsin does not permit the caretaker to deduct from her own income that portion of her income that has been allocated to her children under the FFU policy, provided that the caretaker's income does not fall below the medical assistance categorical levels. As a result, the eligibility of the disabled caretaker for medical assistance is determined without considering the support she provides to her minor children.

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[1] That prorated share is calculated by dividing the legally responsible relative's income and assets by the total number of persons for whom the relative is legally responsible, including himself or herself. Spousal and parental income is thus allocated equally amongst the spouse or parent and those for whom she is financially responsible.

II.

Plaintiffs, all of whom allege that they were harmed by the implementation of Wisconsin's FFU policy, raise a variety of challenges to that policy. First, plaintiffs contend that aspects of the policy are inconsistent with the federal Social Security Act. Plaintiffs further argue that Wisconsin's treatment of disabled caretakers violates the Social Security Act, the Americans with Disabilities Act, and the Rehabilitation Act. The district court rejected each of these contentions, concluding that Wisconsin's medical assistance program fully complies with the requirements of federal law. Our review of the district court's decision is plenary. See *Berman v. GC Services Ltd. Partnership,* 146 F.3d 482, 484 (7th Cir. 1998) (dismissal of complaint and interpretation of federal statute both subject to plenary review).[2]

As we indicated above, the Medicaid program is a cooperative venture between the federal government and the individual states choosing to participate in it. *Michael Reese Physicians and Surgeons, S.C. v. Quern,* 606 F.2d 732, 735 (7th Cir. 1979), *adopted on reh'g en banc,* 625 F.2d 764 (7th Cir. 1980), *cert. denied,* 449 U.S. 1079 (1981); *Vance v. Hegstrom,* 793 F.2d 1018, 1019 (9th Cir. 1986). The program was designed to provide the states with a degree of flexibility in designing plans that meet their individual needs. *Michael Reese*, 606 F.2d at 735. As such, states are given considerable latitude in formulating the

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[2] Plaintiffs brought the instant claims under 42 U.S.C. § 1983 to redress violations of federal law they claim exist in the state program. Defendants have not suggested that such a claim may not be maintained under section 1983. We therefore assume for purposes of this litigation that plaintiffs' claims were properly brought under that statute. *Cf. Smith v. Miller*, 665 F.2d 172, 175 (7th Cir. 1981) ("Congress intended that the 'full panoply' of judicial remedies be available to courts considering in 42 U.S.C. § 1983 actions a state's compliance with the Social Security Act."); *see also Reed v. Blinzinger*, 639 F. Supp. 130 (S.D. Ind. 1986), *aff'd & adopted*, 816 F.2d 296 (7th Cir. 1987) (action brought pursuant to section 1983 alleging that aspects of state medical assistance program were inconsistent with the SSA.).

terms of their own medical assistance plans. *See Smith v. Miller*, 665 F.2d 172, 174 (7th Cir. 1981); *see also generally Dandridge v. Williams*, 397 U.S. 471, 487 (1970); *King v. Smith*, 392 U.S. 309, 318-19 (1968). But the discretion afforded the states is not unlimited. Rather, it is qualified by the requirement that a participating state fully comply with the federal statutes and regulations governing the program. *Schweiker v. Gray Panthers*, 453 U.S. 34, 36-37 (1981); *Smith*, 665 F.2d at 175 & 178. As we explained in *Smith v. Miller*, "a state's discretion in administering the Medicaid program does not shelter it from judicial action on those occasions where it has transgressed the strictures of the Social Security Act." 665 F.2d at 178.

Plaintiffs' most significant challenges to Wisconsin's medical assistance plan relate to whether aspects of the plan comply with subsection (17)(D). We therefore begin with the language of that subsection:

> A State plan for medical assistance must—
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> . . .
>
> (17) . . . include reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plan which . . . (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 ....

Id. This subsection, which allows a state to allocate or "deem" the income of a legally responsible spouse or parent to an applicant for

medical assistance,[3] plainly prohibits a state from taking into account the financial responsibility of any other person for the applicant. Thus, this court and others have uniformly held that in determining eligibility for medical assistance, a state may not allocate to the applicant income of non-legally responsible persons in a related household, such as the applicant's siblings or grandparents. *Reed v. Blinzinger*, 816 F.2d 296, 297 (7th Cir. 1987), *aff'g & adopting*, 639 F. Supp. 130 (S.D. Ind. 1986); *see also, e.g., Malloy v. Eichler*, 860 F.2d 1179, 1183-84 (3d Cir. 1988); *Mitchell v. Lipscomb*, 851 F.2d 734, 736 (4th Cir. 1988); *Olson v. Norman*, 830 F.2d 811, 818-20 (8th Cir. 1987); *Vance*, 793 F.2d at 1024; *Childress v. Bowen*, 833 F.2d 231, 233 (10th Cir. 1987); *State of Georgia Dep't of Medical Assistance v. Bowen*, 846 F.2d 708, 711 (11th Cir. 1988). Indeed, as plaintiffs have alleged, it was precisely to avoid such prohibited deeming of income that Wisconsin adopted its FFU policy, which at the income determination stage, considers only the applicant's own income and a pro rata share of the income and assets of his legally responsible spouse or parent. Plaintiffs do not suggest that Wisconsin runs afoul of subsection (17)(D) at that initial stage. Rather, plaintiffs contend that Wisconsin's policy conflicts with the federal statute only at the final stage—when the applicant's income and resources are compared to a pro rata share of the state's need standard for the entire household group. According to plaintiffs, Wisconsin should be comparing the applicant's income and resources to the needs standard for the size of the applicant's family fiscal unit, not the size of the entire related household. The comparison Wisconsin has chosen to make, plaintiffs argue, assumes that the applicant's need is less because of the presence of non-legally responsible persons in the household. Plaintiffs

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[3] The practice of assigning income to an applicant without also inquiring into whether that income actually is available to the applicant is known as the "deeming" of income. *See Herweg v. Ray*, 455 U.S. 265, 267 (1982); *Vance*, 793 F.2d at 1020 n.1. As the Supreme Court has explained, the "deeming" of income "has the effect of reducing both the number of eligible individuals and the amount of assistance paid to those who qualify." *Gray Panthers*, 453 U.S. at 36.

contend that this assumption has the same effect as deeming the income of those nonlegally responsible relatives to the applicant.

A federal district court in California, and ultimately the Ninth Circuit in an unpublished opinion, accepted a similar argument about the operation of a similar state medical assistance plan in *Sneede v. Kizer*, No. C89-1932, 1990 WL 155532, at *5-7 (N.D. Cal. June 8, 1990), *aff'd mem.*, 951 F.2d 360 (9th Cir. 1991), *cert. denied*, 506 U.S. 939 (1992). The district court in that case found that California's system of prorating need standards "implicitly assum[es] that household members not financially responsible for the applicant are contributing to the applicant's living expenses and thus reducing the applicant's level of need—without inquiring into whether such contributions are actually made." *Id.* at *5. Judge Randa rejected the *Sneede* rationale in this case, however, concluding that "[t]he Wisconsin plan does not attribute the financial responsibility of non-legally responsible individuals to Medicaid applicants or recipients" because the term "financial responsibility" in subsection (17)(D) "refers to income, resources, or an obligation to contribute income or resources to the household." R. 19, at 15. In the district court's view, "[t]he assumption that an individual's need is less because he lives in a household with multiple members is not the equivalent of deeming resources; rather, it reflects a common-sense judgment that living expenses are higher for individuals maintaining their own independent households than they are for individuals sharing accommodations." *Id.* at 15-16. Yet like the court in Sneede, we have some difficulty reconciling that view with the statutory language and the realities of the state's proration system. *See Sneede*, 1990 WL 155532, at *5.

The district court's decision effectively means that subsection (17)(D) applies only when a state is calculating the income available to a medical assistance applicant, and not to the state's assessment, based on that income determination, of whether the applicant is in need of medical assistance. But the statute does not appear to us to be so limited. Nothing in the statutory language suggests that subsection (17)(D) is limited to the calculation of an

applicant's income. Instead, the statute provides that the financial responsibility of someone other than a spouse or parent may not be factored into the determination of "eligibility for and the extent of medical assistance" available under the state's plan. 42 U.S.C. § 1396a(a)(17)(D). In our view, that language must be read as encompassing all aspects of the eligibility determination, including the assessment of the applicant's need, for it is the need standard employed by the state that ultimately will determine both the applicant's eligibility for medical assistance as well as the amount of benefits that will be available. And we agree with the court in *Sneede* that when a state assumes that an applicant's living expenses are less based solely upon the presence of non-legally responsible persons in the household, thereby reducing the applicant's level of need, the state necessarily is assuming that those persons will be contributing to the applicant's living expenses. *Sneede*, 1990 WL 155532, at *5-6. We thus cannot agree with the district court that Wisconsin only is taking account of the "economies of scale" inherent in the sharing of accommodations, for like the court in *Sneede*, we find that argument to be "premised on the assumption that contributions from members of the household [who] are not financially responsible for the applicant are nonetheless *actually* benefitting the applicant by reducing the amount of income/resources that applicant needs for non-medical essentials." *Id.* at *6 (emphasis in Sneede). Assuming the existence of that type of financial assistance is, in our view, the taking into account of the "financial responsibility" of that non-responsible individual. It is thus prohibited by subsection (17)(D). *See also Richardson v. Lewis*, No. 5:92-0731, slip op. at 15-16 (S.D. W. Va. Sept. 23, 1994) (finding similar proration policy inconsistent with subsection (17)(D) in that it "assumes that an individual's need is less because that individual resides with non-financially responsible relatives.").

Our conclusion that Wisconsin's proration policy is premised on an assumption prohibited by the financial responsibility rule of subsection (17)(D) finds support in the Supreme Court's decision in *Van Lare v. Hurley*, 421 U.S. 338 (1975). That case involved the State of New York's policy of

reducing pro rata the shelter allowance provided to AFDC recipients if a nonpaying lodger was living in the recipient's household. The Supreme Court found New York's policy inconsistent with a federal regulation requiring that, in the absence of proof of actual contributions, only the income of a legally obligated parent may be considered in determining the child's eligibility for and the amount of financial assistance. *Id.* at 345 (discussing 45 C.F.R. § 233.90(a) (1974)). The Supreme Court concluded that New York was violating that regulation because its policy was "based on the assumption that the nonpaying lodger is contributing to the welfare household, without inquiring into whether he in fact does so." *Id.* at 346. New York's policy thus ran afoul of the federal bar on "assuming that non-legally responsible persons will apply their resources to aid the welfare child." *Id.*[4]

The Fifth Circuit subsequently concluded that the same AFDC regulation was violated by a Texas policy calling for the proration of a recipient's shelter and utility expenses where noneligible persons were living in the recipient's household.

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[4] The decision of the Second Circuit that the Supreme Court reversed in *Van Lare* took a view of New York's policy that was remarkably similar to that of the district court in this case. *See Taylor v. Lavine*, 497 F.2d 1208, 1215-16 (2d Cir. 1974), *rev'd*, 421 U.S. 338 (1975). The majority opinion in *Taylor* concluded that New York's proration policy "does not attribute a non-existent obligation of support to the lodger, nor does it deny the AFDC-recipient children or caretaker their share of the actual housing expenditures." *Id.* at 1215. The majority found instead that "[p]rorating housing expenses among recipients and non-recipients of public aid accounts for the economies of scale that are realized when individuals live in groups; per-individual housing costs decrease as the number of individuals living together increases." *Id; but see id.* at 1222 (Oakes, J., dissenting) ("It is nonsense . . . to say that the cost of housing to the recipient family decreases when there is a non-paying lodger"). The majority concluded that "the New York scheme does not attribute a false duty of support or a false source of income, but rather accounts for the actual cost of housing to an AFDC-related family." *Id.* at 1216. The Second Circuit majority's view, as we explained above, was flatly rejected by the Supreme Court in *Van Lare*.

Houston Welfare Rights Organization v. Vowell, 555 F.2d 1219 (5th Cir. 1977), *rev'd on other grounds*, 441 U.S. 600 (1979). The Texas policy, like Wisconsin's policy here, had the effect "of lowering the recipient's allowable need so as to lower, in turn, his level of benefits." *Id.* at 1222. The Fifth Circuit found that by implementing such a policy, Texas was violating 45 C.F.R. § 233.90(a), the federal regulation discussed in *Van Lare*:

> The presumption that a recipient's shelter and utility expenses are lowered creating less need when a nonrecipient lives in the household implicitly presumes that the nonrecipient's income is available to offset his share of the shelter and utility costs. If not, the recipient's "need," in terms of actual shelter cost, will not decrease. The [State's] claim that it is only reflecting the economies of scale enjoyed by large groups living together again implicitly presumes that the nonrecipient's income will be available to offset shelter and utilities. Without that presumption, the economies-of-scale argument is irrelevant.

Id. at 1224 (citation omitted); *see also Swift v. Toia*, 461 F. Supp. 578, 581-82 (S.D.N.Y. 1978), *aff'd & adopted*, 598 F.2d 312 (2d Cir. 1979), *cert. denied*, 444 U.S. 1025 (1980). The same presumption underlies Wisconsin's proration policy in this case. Thus, both *Van Lare* and *Vowell* support our view that by prorating the applicant's need based upon the need standard for the applicant's entire family group, including individuals with income who are not legally responsible for the applicant, Wisconsin is violating subsection (17)(D) in that it is implicitly considering the

financial responsibility for the applicant of a non-legally responsible person in the household.[5]

From what we have said about the proration policy, it should be clear that Wisconsin's policy of combining the deductibles of individual family members to establish a deductible for the entire family group also is inconsistent with subsection (17)(D). Whenever a non-legally responsible member of the household, such as a sibling, has a medical assistance deductible that Wisconsin would combine with the applicant's deductible, Wisconsin necessarily would be assigning financial responsibility for the applicant to that non-responsible sibling. Absent the income of that sibling, which produced her own deductible and thus the higher family deductible, the applicant would be entitled to medical assistance by satisfying only her individual deductible amount. Aggregating deductibles in this way thus takes account of the income of the non-legally responsible sibling and thereby violates subsection (17)(D).

III.

Plaintiffs direct our attention to one other aspect of Wisconsin's medical assistance plan. They take issue with Wisconsin's policy that a disabled parent or caretaker, in applying

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[5] We are unpersuaded by defendants' suggestion that other provisions of the SSA somehow authorize the violation of subsection (17)(D) we have described. Although other provisions of the Act require states to develop income standards on a family basis for the medically needy and poverty level categories (*see* 42 U.S.C. §§1396b(f)(1)(B)(i) & 1396a(1)(2)(A)(i)), nothing in those provisions suggests that the standards may be applied in a manner inconsistent with 42 U.S.C. § 1396a(a)(17)(D). Neither provision, for example, defines those individuals who are to be included in the family unit, and thus, neither provision requires the system employed by Wisconsin here. Furthermore, defendants offer no authority supporting the principle underlying their argument—that the needs component of the medical assistance equation is exempt from subsection (17)(D)'s financial responsibility rule. As we explained above, we find such a principle to be incompatible with the plain language of subsection (17)(D).

for medical assistance, is not permitted to deduct from his or her own income that portion which has been allocated to dependent children under the FFU policy. Plaintiffs contend that in some cases, the parent or caretaker's eligibility for medical assistance is therefore determined without regard to the support she provides her dependent children. According to plaintiffs, this policy violates the SSA requirements that a state provide a reasonable evaluation of the applicant's income and resources and that it take into account only income and resources that are actually available to the applicant. *See* 442 U.S.C. § 1396a(a)(17)(B) & (C). We agree with the district court, however, that Wisconsin's plan provides a reasonable basis for determining whether a disabled caretaker will be eligible for medical assistance. *See* R. 19, at 19. Wisconsin is authorized by subsection (17)(D) to allocate a portion of the parent's income to the child in assessing the child's eligibility for medical assistance, and we find nothing in the SSA that requires the State at the same time to take account of that or any of the various other demands on the parent's resources in assessing the parent's own eligibility. We therefore agree with the district court that Wisconsin's treatment of disabled caretakers is consistent with subsections (17)(B) & (C).

Nor do we think Wisconsin's policy violates the provisions of the Americans with Disabilities Act (*see* 42 U.S.C. § 12132) or the Rehabilitation Act (*see* 29 U.S.C. § 794) prohibiting the denial of government benefits on the basis of a disability. Plaintiffs contend that disabled caretakers are subject to disparate treatment under Wisconsin's medical assistance plan and that the disparate treatment is based on the fact that the caretakers are disabled. Although plaintiffs' articulation of the basis for that theory is vague at best, we take them to mean that under Wisconsin's FFU policy, a parent's income generally is allocated pro rata to the children to whom support is provided and that such an allocation should not then be ignored where the parent herself is disabled and is also an applicant for medical assistance. But the fact that plaintiffs may think Wisconsin's policy unfair in that regard does not imply disparate treatment that is traceable to the caretaker's disability. Rather, the original allocation of the parent's income

under Wisconsin's FFU policy is made pursuant to the authorization in 42 U.S.C. § 1396a(a)(17), and that allocation occurs whether or not the parent is herself disabled and whether or not she is applying for medical assistance. The fact that the allocation is then ignored in calculating the parent's own income for medical assistance purposes cannot legitimately be attributed to the applicant's disability.

IV.

For the reasons we have discussed, the district court's judgment dismissing plaintiff's complaint is affirmed in part and reversed in part. The case is hereby remanded to the district court for further proceedings not inconsistent with this opinion. Costs in this appeal are assessed against defendants.

AFFIRMED IN PART,
REVERSED IN PART, AND REMANDED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

PATRICK ADDIS, et al.,

Plaintiffs,

v. Case No. 93-C-1363

GERALD WHITBURN, et al.,

Defendants.

DECISION AND ORDER

This case involves a challenge to the Wisconsin Medical Assistance Family Fiscal Unit policy ("FFU policy") and the Wisconsin Medical Assistance disabled caretaker policy. Plaintiffs, who seek to represent a class of all Wisconsin Medical Assistance applicants and recipients whose benefits have been or will be reduced by these policies, contend that the Wisconsin policies violate the Social Security Act ("SSA") and its implementing regulations, the Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973.

Before the Court are three motions relating to this action: (1) the defendants' motion to dismiss for failure to state a claim upon which relief can be granted; (2) the plaintiffs' motion for a preliminary injunction prohibiting the defendants from implementing these policies; (3) the plaintiffs' motion to certify this suit as a class action. For the following reasons, the Court concludes that it is clear from the complaint that the Wisconsin Medical Assistance plan complies with the federal statutory and regulatory requirements. Accordingly, the complaint fails to state

a claim upon which relief can be granted and is dismissed. In light of this dismissal, the plaintiffs' motions are denied.

FACTS

The following facts, largely taken from the plaintiffs' complaint, are undisputed:

I. The Medicaid Program

The Medical Assistance program, popularly known as Medicaid, was enacted by the Social Security Act Amendments of 1965, P.L. 89-87, in order to assist the states in providing medical care to poor families with dependent children and disabled individuals unable to afford necessary medical services. *See* 42 U.S.C. § 1396 *et. seq.* In contrast to the other purely federal programs included under the rubric of the SSA, Medicaid is a joint federal-state program. The federal government provides substantial funding for the Medical Assistance program; however, the day-to—day administration of the program is left to the states. Although the states have considerable leeway in determining eligibility for Medical Assistance coverage and the scope of the benefits provided, as is the case with most federally funded programs, the Medicaid money comes with strings attached. *See* Harvey L. McCormick, *Medicare and Medicaid Claims and Procedures*, § 832 (2d ed.).

The first and most important set of conditions imposed by the federal government relate to the eligibility standards for Medical Assistance coverage. States are required to provide Medical Assistance coverage to certain individuals eligible for other assistance programs. The SSA provides that these individuals belong to the class of the "categorically needy" and are

thus automatically entitled to Medical Assistance coverage.[1] 42 U.S.C. § 1396a(a)(10)(A)(i). *See also* Wis. Stats. § 49.46(1). The federal government also permits but does not require states to provide Medical Assistance coverage to individuals who are considered "medically needy." 42 U. S.C. § 1396a(a)(10)(C). An individual may be considered medically needy if he has income and resources that exceed the categorically needy limits but does not have sufficient resources to meet his expenses for necessary medical care. *See* McCormick at § 833. Although the states are given the discretion to set eligibility standards for medically needy coverage, the federal government imposes restrictions on the state standards.[2]

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[1] The "categorically needy" include:

1. Recipients of Aid to Families with Dependant Children (AFDC) benefits and Supplemental Security Income (SSI) benefits;
2. Pregnant women, children under 18 and their caretakers, and disabled persons with income and assets at or below AFDC limits;
3. Persons who lose AFDC eligibility because of increased earnings or child support income; and
4. Infants under the age of one who are born to women eligible for Medical Assistance at the time of birth.

42 U.S.C. §1396a(a)(10)(A)(i). *See also* Wis. Stats. § 49.46(1).

[2] In calculating eligibility for medically needy coverage, the SSA requires that a state's medically needy income levels must be "equivalent to 133 1/3 percent of the highest amount which would ordinarily be paid to a family of the same size" under the state's AFDC program. 42 U.S.C. § 1396b(f)(B)(i). The SSA implementing regulations allow a state to use a higher amount for families of one so long as it does not exceed 133 1/3 percent of the AFDC amount for a family of two. 42 C.F.R. § 435.1007(a)(2). In Wisconsin, the medically needy standard is the same as the SSI benefit level; the standard for groups of two or more is set at 133 1/3 percent of the current state AFDC amount. Wis. Stats. § 49.47(4)(a) and (c)(1).

In recent years, Congress has expanded the Medical Assistance program to include pregnant women and children whose family income is at or below a certain percentage of the poverty level.[3] 42 U.S.C. § 1396a(a)(10)(A)(IV-VII). Pursuant to these new Congressional mandates, Wisconsin enacted the "Healthy Start" program which also provides Medical Assistance coverage for qualifying poor children and pregnant women. Wis. Stats. §§ 49.46, 49.47.

In addition to these specific eligibility requirements, the federal government also imposes general guidelines which the states must follow when developing Medical Assistance eligibility standards. First, the SSA requires that the states use standards for determining income and resource eligibility which are no more restrictive than the standards the state employs in determining eligibility for the Supplemental Security Income (SSI) program and no more restrictive than the methodology the state employs in determining eligibility for the

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[3] Specifically, current federal law requires states to provide Medical Assistance to the following additional classes of individuals:

1. Pregnant women and infants under one year of age whose family income level is at or below 133 percent of the poverty level; States may, at their option, provide Medical Assistance coverage to individuals in this group whose family income level is at or below 185 percent of the poverty level.
2. Children under the age of six whose family income is at or below 133 percent of the poverty level; and
3. Children born after September 30, 1993 who are between the ages of 6 and 19 whose family income is at or below 100 percent of the poverty level.

42 U.S.C. § 1396a(a)(10)(A)(IV-VII).

Aid to Families with Dependent Children (AFDC) program. 42 U.S.C. § 1396a(a)(10)(C)(i). Second, the SSA requires that the states take into account only the income and resources actually available to the applicant or recipient. 42 U.S.C. § 1396a(a)(17)(B). Third, the SSA requires that the state system provide a reasonable evaluation of the income and resources available to the applicant or recipient. 42 U.S.C. § 1396a(a)(17)(C). Fourth, the SSA prohibits the states from taking into account the income or resources of any non-legally responsible individual (*i.e.* anyone other than a parent or spouse) for a Medical Assistance applicant or recipient. 42 U.S.C. § 1396a(a)(17)(D). Finally, in determining the eligibility of pregnant women and children in the Healthy Start program discussed above, states must determine family income in accordance with the methodology employed under the state's AFDC program, except to the extent that it is inconsistent with 42 U.S.C. § 1396a(a)(17)(D). 42 U.S.C. § 1396a(1)(3)(E).

I. Operation of Wisconsin's Medical Assistance Program

The State of Wisconsin has elected to participate in the Medicaid program. *See* Wis. Stats. §§ 49.46, 49.47. The State Department of Health and Social Services ("DHSS") is charged with supervising and administering the Medical Assistance program, Wis. Stats. §§ 46.03(8), 46.206. DHSS in turn contracts with various county departments of social services to run the program at the local level. Wis. Stats. §§ 46.215, 46.22, 49.45(2)(a)(3).

Wisconsin recently changed its policy for determining eligibility for Medical Assistance. Under the old Wisconsin policy, the income and assets of an entire family was calculated and compared to income and asset limits for a family of that size. The new policy -- termed the Family Fiscal Unit (FFU) policy -- determines eligibility for Medical Assistance one individual at a time rather than family by family. Wisconsin enacted this new policy in order to avoid "calculating" or

"assessing" the income of non-legally responsible individuals or relatives as income of program applicants or recipients, which is prohibited by 42 U.S.C. § 1396a(a)(17)(D).[4]

In determining eligibility for Medical Assistance in Wisconsin, an applicant's income and assets are compared to certain set standards. The first step is to determine whether an individual is categorically eligible for the program. If an individual's income and assets exceed the categorical limits, he or she is not categorically eligible. In that case, the individual's income and assets are compared to the medically needy income and asset standards. Wis. Admin. Code, HHS 103.04(1) and (2). If an individual's income exceeds the medically needy limits, he may still be eligible for the program; however, he will be required to pay a Medical Assistance deductible based upon the excess income. Wis. Stats. § 49.47(4)(c)(2). Once an individual accumulates medical bills (not covered by other insurance) which equal the deductible amount, he can then be certified for Medical Assistance for a six-month period. Wis. Admin. Code HHS 103.04(3) and 103.08(2).

Specifically, under the Wisconsin FFU policy, eligibility for AFDC-related and Healthy Start Medical Assistance is determined through the following process: (1) total each individual's income and assets; (2) determine for which persons in the home each individual is legally responsible and divide each individual's income and assets by the number of persons for whom he or she is responsible; (3) allocate the portion of the individual's income and assets to persons for whom he or she is legally responsible and add the allocation from the legally responsible relative to the person's income and assets; (4) determine who is in the Family Fiscal Unit; (5) pick the appropriate income and asset standards (based on FFU size) for each individual, divide the income and asset standards by the number of persons in the FFU and compare the individual's total income and assets to the "per

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[4] Attributing the income of a non-legally responsible member of a household to other members of that household is referred to as the "deeming" of income.

person" income and asset standards to determine financial eligibility; and (6) calculate a Medical Assistance deductible, if necessary. *See* Affidavit of Patricia DeLessio, Exh. 1.

In determining the Medical Assistance eligibility of disabled caretakers, the Wisconsin policy provides that the income that is allocated to the caretaker's children is not deducted from the caretaker's available income when determining the disabled caretaker's Medical Assistance eligibility unless his or her income is below the Medical Assistance categorical levels. As a result, a disabled caretaker's eligibility is determined without considering his or her support of his or her minor children. The caretaker's eligibility is then tested against the medically needy Medical Assistance standard for his or her group size.

LAW

I. LEGAL STANDARD

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a district court to dismiss a claim for "failure to state a claim upon which relief can be granted." In evaluating a motion filed under this rule, the Court must accept as true all well-pleaded factual allegations contained in the complaint and must draw all reasonable inferences in favor of the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Janowsky v. United States*, 913 F.2d 393, 395 (7th Cir. 1990); *Gillman v. Burlington Northern R. Co.*, 878 F.2d 1020, 1022 (7th Cir. 1989). The Court must deny a motion to dismiss unless it appears beyond doubt that a plaintiff is unable to prove any set of facts which would entitle him to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

II. APPLICATION

The defendants' accept the plaintiffs' description of the Wisconsin Medical Assistance FFU and disabled caretaker policies. The basis of their motion to dismiss is that, contrary to the plaintiffs' claims, the policies in question fully comply with the

federal statute and regulations. Because the facts are undisputed, this dispositive motion on the pleadings is properly before the Court.

Prior to addressing the plaintiffs' specific challenges to the Wisconsin plan, it is important to emphasize that the responsibility for the operation and administration of the Medicaid program is assigned to the states. *See Michael Reese Physicians and Surgeons S.C. v. Quern*, 606 F.2d 732, 735 (7th Cir. 1979) ("Medicaid is an experiment in cooperative federalism which literally abounds with options.") (citations omitted). In implementing the program, the states must comply with the requirements of the federal legislation and regulations. *Smith v. Miller*, 665 F.2d 172, 175 (7th Cir. 1981). However, within the broad statutory and regulatory mandates, a federal court should defer to a state in designing a Medicaid program that best fits its needs. *See Michael Reese*, 606 F.2d at 735 ("Medicaid is designed to be flexible enough to meet the varying needs of each state which elects to participate in the program."); *Warr v. Horsley*, 705 F. Supp, 540, 542 (M.D.Ala. 1989) ("States may design their own Medicaid programs and are given broad discretion in structuring those programs to meet their particular needs and best allocate financial resources according to local conditions.") (citing *Beal v. Doe*, 432 U.S. 438, 440-44 (1977)).

It is interesting to note that the Wisconsin policy at issue here is modeled after a policy proposed in 1993 by the Health Care Financing Administration (HCFA) and the United States Department of Health and Human Services (HHS) for determining Medicaid eligibility. The HCFA proposed regulations mandated a "proration policy" to calculate Medicaid eligibility. Under this mandatory proration policy, each individual in a family unit would have his or her income and resource eligibility measured. Countable income and resources from parents and guardians would be prorated equally among their dependents. Non-responsible members of the family unit would not have to prorate their income among the other family members. Agencies could then compare the individual unit's prorated amount to the

prorated standards to ultimately ascertain health care eligibility. At the time, the HCFA thought that this method best reflected the appellate courts' interpretations of Medicaid law and the Social Security Act. 58 Fed. Reg. 11, 4908-4939. The current Wisconsin policy now under fire is virtually identical to these HCFA's proration regulations. (*See* Affidavit of Patricia DeLessio).

On February 19, 1993, in order to allow the Clinton administration time to review the policies in these regulations, the HCFA delayed the effective date of these standards by six months. 58 Fed. Reg. 9120. Subsequently, the HCFA issued two further delays to complete the review of the policies, pushing back the effective date of the policy to October 18, 1994. 58 Fed. Reg. 44457; 59 Fed. Reg. 8138. Finally, on August 22, 1994, the HCFA withdrew their previous recommendations regarding the proration policy. The HCFA cited overwhelming negative commentary regarding the mechanics of administering the proration policy as the reason for withdrawal. Those submitting comments apparently expressed concern that the new procedures were error prone and unnecessarily complex, and that significant costs would result from the required system changes and personnel retraining. Therefore, the HCFA formally withdrew its regulations. In doing so, the agency stated that it was leaving states flexibility to interpret the current provisions within constraints of court orders or agreements with advocate groups. In the absence of these specific regulations, the methodologies employed by the states will remain valid as long as they comply with the Medicaid statute and any applicable court orders. 59 Fed. Reg. 43052-53. Moreover, the proposed HCFA regulations would have made the system enacted by Wisconsin *mandatory* for all states. It is significant that these regulations were withdrawn, not because they failed to comply with the SSA, but in order to provide the states with more flexibility in administering their Medical Assistance programs. Although the Court is cognizant of the fact that these proposed regulations are not the law, their proposal and history certainly suggests that the Wisconsin plan complies with federal law; at least the federal agency in charge of implementing the Medicaid program thought so.

The Wisconsin Medicaid program provides a reasonable system for determining eligibility for Medical Assistance coverage. It was enacted in response to a federal mandate to avoid the deeming of income of non-legally responsible individuals to other individuals within the household. *See* 42 U.S.C. 1396a(a)(17)(D); *Reed v. Blinzinger*, 639 F. Supp 130 (S.D.Ind. 1986). The plan successfully implements that mandate. The Wisconsin plan may not be perfect and it may not be the best or most sensible way to determine eligibility, but Wisconsin is not required to employ a perfect system or even the best system. All that is required is that its program comply with federal law. Plaintiffs claim that it fails to do so, and it is to these specific compliance challenges that the Court now turns.

A. Plaintiffs' Challenges to Income/Resource Proration Methodology in FFU Policy

The plaintiffs first claim that the FFU policy violates the SSA by requiring the use of separate fiscal test groups in all Healthy Start cases. The plaintiffs point to 42 U.S.C. § 1396a(1)(3)(E), which provides that "family income," for purposes of calculating Medical Assistance eligibility, is to be calculated in accordance with the methodology employed under the state AFDC plan, except to the extent that such methodology is inconsistent with the deeming prohibition of 42 U.S.C. § 1396a(a)(17)(D). *See also*, 42 C.F.R. § 435.401. Under the AFDC program. all related siblings and their parents must be included as one group in determining eligibility. 42 U.S.C. § 602(a)(38). Thus, the plaintiffs contend that separate fiscal test groups are permissible only where the deeming of income would otherwise occur.

Plaintiffs' also claim that the Wisconsin policy violates the SSA because the eligibility standards are not comparable to, and in some cases are more restrictive than, the AFDC program standards. *See* 42 U.S.C. § 1396a(a)(10)(C)(i); 42 C.F.R. § 435.401. According to the plaintiffs, the FFU policy and

the use of prorated income standards apply only to individuals who would be eligible for cash benefits in a single assistance unit under the AFDC filing unit rule. They claim that recipients who would be in the same AFDC assistance units as their co-residents were they receiving cash benefits receive a reduced categorical, medically needy or Healthy Start standard; recipients in other households do not. Plaintiffs further argue that the FFU policy, as applied to categorically and medically needy applicants and recipients, violates the SSA in that it applies lower income standards for calculating income than Wisconsin AFDC payment levels.

The Wisconsin FFU proration policy does not violate the SSA because subsection (17)(D) of section 1396a(a) requires states to use a different method for calculating eligibility for Medicaid than is used to calculate eligibility for AFDC. *See* 42 U.S.C. § 1396a(a)(17)(D); 42 C.F.R. § 435.602. Thus, the federal government *requires* states to take into account all income and resources for an entire family in determining AFDC eligibility, and *prohibits* states from taking into account such income and resources from non-legally responsible individuals in determining Medicaid eligibility. *See Reed*, 639 F. Supp. 130. As a result of these inconsistent mandates, it is inevitable that the process for determining AFDC eligibility will not be the same as the process for determining Medical Assistance eligibility.

Under the old system for determining Medicaid eligibility, a family's income and resources were compared to income and asset standards for a family of that size. In order to comply with the legislation and regulations proscribing the deeming of income from one sibling to another, this family-based model was altered. Under the new Wisconsin scheme, *individual income* is calculated in each case; the department prorates the income and resources for all legally responsible relatives, adds this amount to any individual income and resources, and compares the total to the eligibility standards for a fiscal family unit of the same size. In other words, instead of comparing household income and resources to household standards, Wisconsin compares the income

and resources of an individual within a household to individual standards.

Wisconsin's system provides a reasonable approach to accommodating the competing interests of the entire Medical Assistance scheme. It represents a reasonable, good-faith attempt to comply with the income deeming prohibition of the SSA while reflecting the actual need of individuals within families. In enacting this new policy, the State of Wisconsin was responding directly to section (a)(17)(D); it formulated a system which avoids deeming of income. Moreover, as discussed above, the Wisconsin system follows the approach proposed by the HCFA. Thus, the agency in charge of implementing the Medicaid provision of the SSA obviously thought that the Wisconsin approach comports with federal law. In addition, the Wisconsin provisions fall squarely within the exception contained within 42 U.S.C. § 1396a(1)(3)(E); Wisconsin modified its AFDC methodology to comply with clause (D) of subsection (a)(17). Wisconsin may not have chosen the most narrowly-tailored way of achieving this result, but it is not obligated to do so. To the extent that the Wisconsin Medicaid eligibility standards differ from the AFDC standards, it is to comply with other federal mandates. Accordingly, the Court concludes that the Wisconsin FFU comports with the SSA in this respect.

B. Plaintiffs' Arguments that FFU Policy Violates Anti-Deeming Provisions of SSA

Plaintiffs also challenge several aspects of the Wisconsin FFU policy on the ground that they violate the deeming prohibition of the SSA. Subsection (a)(17)(D) of the SSA requires that a state plan not take into account the financial responsibility of any non-legally responsible individual (*i.e.* anyone other than parents and/or spouses) for the applicant or recipient in determining eligibility. 42 U.S.C. § 1396a(a)(17)(D).

The plaintiffs first argue that the Wisconsin FFU violates subsection (17)(D) by using prorated need standards to

determine eligibility for Medical Assistance coverage. Apparently the plaintiffs object to the fact that the Wisconsin income and resource standards, to which individual income and resources are compared, are based upon the size of the entire family. Thus, one-half of the medically needy standard for a family of two, or one-fifth of the medically needy standard for a family of five, is less than the standard for an individual living alone. The Wisconsin policy thus assumes that an individual's need is less because he or she lives in a household with multiple members. The plaintiffs believe that this constitutes the deeming of income, which is prohibited by 42 U.S.C. § 1396a(a)(17)(D).

In support of this challenge, the plaintiffs rely on a case from the Northern District of California, *Sneede v. Kizer*, No. C89-1932 (slip op. of June 8, 1990). The *Sneede* Court concluded that any assumption that a non-legally responsible individual within a household actually benefitted an applicant for Medical Assistance was prohibited by the anti-deeming provision of subsection 17(D). *Id.* at pp. 8-9. Specifically, the *Sneede* Court held:

> [T]he plain meaning of section 1396a(a)(17)(D) is that the state may not, in determining eligibility, assume the financial responsibility of any person for the applicant (except for parents/spouses) -- whether that financial responsibility is in the form of income attributable to the applicant or in the form of contributions to the applicant's basic living expenses.

Id. at p. 8.

Subsection (17) requires that a state plan include reasonable standards for determining eligibility for Medical Assistance; in doing so, subsection (17)(D) prohibits the states from taking into account "the *financial responsibility* of any individual for any applicant or recipient" except for that of parents and spouses. The issue here is whether the assumption that an

individual's need is less because he or she lives in a household with multiple members constitutes taking into account the financial responsibility of the other members of the household. The Court respectfully disagrees with the holding in *Sneede* and concludes that the imputation of need does not constitute taking into account financial responsibility. The Wisconsin plan does not attribute the financial responsibility of non-legally responsible individuals to Medicaid applicants or recipients. The Court concludes that "financial responsibility," as that term is used in subsection (17)(D), refers to income, resources, or an obligation to contribute income or resources to the household. The assumption that an individual's need is less because he lives in a household with multiple members is not the equivalent of deeming resources; rather, it reflects a common-sense judgment that living expenses are higher for individuals maintaining their own independent households than they are for individuals sharing accommodations.

Moreover, this provision of the Wisconsin plan goes to the establishment of income level benchmarks, governed by subsection (1) of the Medicaid statute. The SSA gives the states considerable discretion, within the federally prescribed ranges, to determine the benchmark standards for income and resources for Medical Assistance applicants. *See* 42 U.S.C. § 1396a(1)(2). The Wisconsin system represents a reasonable attempt to reconcile the demands of both subsections. The Wisconsin plan is consistent with federal law in this regard.

The plaintiffs' next argue that the Wisconsin policy violates the SSA because it results in the double counting of a legally responsible relative's income and resources. Subsection (a)(17) of the statute requires that a state plan "include reasonable standards," 42 U.S.C. a(a)(17), "provide for taking into account only such income and resources as are . . . available to the applicant or recipient," 42 U.S.C. a(a)(17)(B), and "provide for a reasonable evaluation of any such income or resources," 42 U.S.C. a(a)(17)(C). According to the plaintiffs, under the FFU policy an individual's income and resources are counted once as a result of the fact that a pro rata share of the relative's income and resources

are deemed to the Medical Assistance applicant or recipient, and are then counted a second time as a result of the fact that the applicant or recipient's income and resources are compared to reduced prorated income and resource standards because of the presence of the legally responsible relative in the home. In other words, because one-half of the income and resources standards for a family of two is less than the standards for an individual living alone, the assumption that these individuals' need is less because they live in multi-member households constitutes double counting of income and resources and is inherently unreasonable.

The plaintiffs' challenge to this aspect of the Wisconsin plan is based upon the theory, rejected above, that the Wisconsin assumption that an individual's need is less because he or she lives in a household with multiple members is the equivalent of deeming income or resources of others to that individual. For the reasons discussed above, the Court does not think that the adjustment of income and resource benchmarks based upon the number of individuals living in a household is the same as taking into account the income and resources of other individuals. Accordingly, this challenge to the Wisconsin policy must fail.

Finally, the plaintiffs' claim that the Wisconsin FFU policy violates subsection (a)(17)(D) because it requires aggregation of the Medical Assistance deductibles of non-legally responsible individuals. Under the policy, if a family has two Healthy Start age children whose separate incomes are over the Healthy Start limits by $200 and $300 respectively, these excess income amounts are added together to arrive at one Healthy Start deductible amount. According to the plaintiffs, the combination of deductibles results in the combination of excess income of siblings in violation of the prohibition on the deeming of income.

This aggregation of deductibles is not prohibited deeming under the SSA. Combining the individual deductibles to reach one family deductible does not constitute taking into account financial responsibility of one sibling for another; rather, it simply

reaggregates (into one family unit) that which has been disaggregated for the purpose of avoiding the deeming of income to non-legally responsible individuals. As discussed above, it is not improper for Wisconsin to take into account the impact of the incurred expenses of one member of a household on other members of the household. Accordingly, the Court concludes that the Wisconsin policy of combining deductibles is reasonable and in compliance with federal law.

C. Plaintiffs' Challenges to the Disabled Caretaker Policy

Finally, the plaintiffs challenge Wisconsin's treatment of disabled caretakers on the grounds that (1) the Wisconsin policy violates the SSA, and (2) the Wisconsin policy violates the Americans with Disabilities Act (ADA) and the Rehabilitation Act. First, the plaintiffs claim that Wisconsin's treatment of disabled caretakers violates the SSA because the eligibility determination methodology used fails to consider a caretaker's support for his or her children. According to the plaintiffs, this violates the SSA requirements that the state plan take into account only income and resources available to the applicant or recipient and provide for a reasonable evaluation of income and resources. *See* 42 U.S.C. § 1396a(a)(17)(B) and (C).

Under the Wisconsin plan, the income of a parent is prorated and attributed to his or children in determining the children's eligibility for Medical Assistance. However, when determining the parent's eligibility for Medical Assistance, the Wisconsin plan considers the entire amount of that parent's income in determining his eligibility. Thus, argue the plaintiffs, the plan considers income not actually available to the parent (the money spent to support the children in the household) and treats parent-caretakers unreasonably and unfairly.

Plaintiffs' challenges are similar to the "double deeming of income and resources" argument asserted above; it rests on the premise that expenditures should be considered to be

the equivalent of income and resources. As discussed in Section II.B *supra*, the Court rejects this argument. The SSA requires the state plan to take into account only such *"income and resources"* as are actually available to the applicant or recipient. 42 U.S.C. § 1396a(a)(17)(B). It does not require that the state plan make an individualized determination of the varying demands on the resources of applicants and recipients. Such a requirement would place unreasonable demands on the state. Finally, the Court does not think that Wisconsin's failure to consider the support provided to dependent children violates subsection (17)(C). That subsection requires a state to provide a reasonable evaluation of the "income and resources" of the applicant or recipient and not the financial demands made upon him. The Wisconsin plan, while not perfect, provides for a reasonable method of calculating the eligibility of disabled caretakers. As such. the Wisconsin policy complies with the SSA.

The plaintiffs also claim that the Wisconsin disabled caretaker policy violates the ADA and the Rehabilitation Act because it treats disabled caretakers differently from non-disabled caretakers in determining eligibility for Medicaid. Both statutes require that individuals not be discriminated against in determining eligibility for government benefits on the basis of their disability. *See* 29 U.S.C. § 794 (Rehabilitation Act) ("no otherwise qualified individual . . . shall, solely by reason of his handicap" be denied government benefits); 42 U.S.C. § 12132 (ADA) ("no qualified individual with a disability shall, by reason of such disability," be denied public benefits).

According to the plaintiffs, the Wisconsin disabled caretaker policy violates these statutory mandates for the same reason they claim the policy violates the SSA: because the disabled caretaker's income is determined without considering his support for his dependent children; in contrast, pro rata shares are deducted from a non-disabled caretaker's income for the support provided to dependent children. However, for the reasons discussed above, the Court concludes that Wisconsin does not treat disabled caretakers differently *because of their disability*; they are

treated differently because federal law requires it. This does not constitute a violation of the ADA or the Rehabilitation Act.

III. CONCLUSION

The federal requirements imposed upon the states as conditions to receiving Medicaid funding are complex and arcane. The sixty-plus page statute (and the hundred-plus page regulation) is confusing and in some cases contradictory.[5] The statute imposes close to impossible demands on the states which are supposed to be given the freedom to operate their Medical Assistance plans as they see fit. *See Michael Reese*, 606 F.2d at 735; *Horsley*, 705 F. Supp. at 542. Wisconsin has made a good-faith effort to implement a plan for determining Medical Assistance eligibility that conforms to the federal requirements. It even proposed a methodology for determining eligibility based upon the HCFA's own proposal. The HCFA's proposal was withdrawn because it failed to provide states with the necessary flexibility to administer their Medicaid programs.

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[5] One commentator described the Medicaid eligibility requirements as follows:

> The eligibility requirements . . . are complex, and frankly, byzantine. Congress initially predicated Medicaid eligibility on eligibility for the [AFDC] and the [SSI] programs. Since Medicaid's inception, Congress has repeatedly changed eligibility requirements to meet specific needs. The result of such eligibility expansions is a highly technical, virtually incomprehensible body of Medicaid eligibility law.

Eleanor D. Kinney, Rule and Policy Making for the Medicaid Program: A Challenge to Federalism, 51 Ohio St.L.J. 855, 864 (1990).

According to the United States Supreme Court, while Congress has the power to fix the terms under which it disburses federal money to the states,

> The legitimacy of Congress' power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts the terms of the "contract." There can, of course, be no knowing acceptance if a State is unaware of the conditions or *is unable to ascertain what is expected of it.*

Suter v. Artist M., 503 U.S. 347, 112 S. Ct. 1360, 1366 (1992) (quoting *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981) (emphasis added). Congress and the HCFA have made it extraordinarily difficult for the states to ascertain what is expected of them in structuring their Medicaid plans. Wisconsin has done its best and has complied with these federal requirements. Accordingly, the Court concludes that nothing in the Wisconsin Medical Assistance plan violates the requirements of the federal legislation and regulations.

NOW THEREEORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. The defendants' motion to dismiss is granted and the case dismissed; and

2. In light of this dismissal, the plaintiffs' motions for class certification and for a preliminary injunction are denied.

Dated at Milwaukee, Wisconsin, this 25th day of September, 1996.

SO ORDERED,

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HON. RUDOLPH T. RANDA
U. S. District Judge